

***AGRICULTURE COMMITTEE***

***ADMINISTRATIVE RULES REVIEW***

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## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.06.10 - RULES GOVERNING THE PALE CYST NEMATODE (*GLOBODERA PALLIDA*)**

**DOCKET NO. 02-0610-0901 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is **October 1, 2009**.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 22-2013, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than December 16, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**A temporary rule is needed to address areas and fields already under regulation by USDA and ISDA. This rule was published as a temporary rule under docket 02-0610-0701 on December 5th, 2007, and approved as a temporary rule by the 2008 and 2009 legislatures. This rule was based on and parallels a USDA interim rule published in the Federal Register Volume 72, No. 76, September 12, 2007. USDA published the final rule in the Federal Register Vol. 74, No. 81, April 29, 2009. The rule change incorporates by reference the changes listed in the final Federal rule and makes some technical corrections. By maintaining and enforcing this rule, which parallels the federal rule, the department avoids having the entire state put under a federal quarantine, which would affect several agricultural industries besides the potato industry.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**Compliance with federal regulation changes.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

No fees or charges are being imposed through this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal

impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no impact to the general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this change is needed for compliance with federal regulation changes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael E. Cooper, Bureau Chief at (208) 332-8620.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before December 23, 2009.

DATED this 13th day of October, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790, Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

***THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE***

**IDAPA 02**  
**TITLE 06**  
**CHAPTER 10**

**02.06.10 - RULES GOVERNING THE PALE CYST NEMATODE (*Globodera pallida*)**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Section 22-2013, Idaho Code. (10-1-09)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.06.10, "Rules Governing the Pale Cyst Nematode (*Globodera pallida*)."  
(10-1-09)T

**02. Scope.** The purpose and goal of this rule is to prevent the spread of Pale Cyst Nematode (*Globodera pallida*) throughout Idaho and the United States. (10-1-09)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (10-1-09)T

**003. ADMINISTRATIVE APPEAL.**

There is no provision for administrative appeals before the Idaho State Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. (10-1-09)T

**004. INCORPORATION BY REFERENCE.**

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.10 incorporates by reference: (10-1-09)T

**01. 7 CFR Part 301 SubPart - Pale Cyst Nematode.** Sections 301.86 through 301.86-9 as published under Docket No. APHIS-2006-0143 in the Federal Register Volume 72, No. 176, Wednesday, September 12, 2007, and as amended under Docket No. APHIS-2006-0143 published in the Federal Register Vol. 74, No. 81, Wednesday, April 29, 2009, and except as amended below in this rule. (10-1-09)T

**02. USDA APHIS PPQ Treatment Manual Schedule T406-d, Revision 10, September 2006.** (10-1-09)T

**03. 7 CFR Part 305 - Phytosanitary Treatments, as revised September 12, 2007.** (10-1-09)T

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

**01. Street Address.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (10-1-09)T

**02. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-09)T

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P. O. Box 790, Boise, Idaho 83701-0790. (10-1-09)T

**04. Telephone Number.** The telephone number of the central office is (208) 332-8500. (10-1-09)T

**05. Fax Number.** The fax number of the central office is (208) 334-2283. (10-1-09)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records and are available for inspection and copying at the department. (10-1-09)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS AND TERMS.**

The Idaho State Department of Agriculture adopts the definitions set forth in Title 22, Chapter 20, Idaho Code. In addition, as used in this chapter: (10-1-09)T

**01. Inspector.** Any employee of ISDA, APHIS, the U.S. Department of Agriculture, or other person authorized by the USDA APHIS Administrator or ISDA Director to perform the duties required under this rule. (10-1-09)T

**02. Interstate.** From any state into or through any other state. (10-1-09)T

**03. Intrastate.** Movement within the boundaries of the state of Idaho. (10-1-09)T

**011. ABBREVIATIONS.**

**01. APHIS.** Animal and Plant Health Inspection Service. (10-1-09)T

**02. ISDA.** Idaho State Department of Agriculture. (10-1-09)T

**03. PCN.** Pale Cyst Nematode. (10-1-09)T

**04. PPQ.** Plant Protection and Quarantine. (10-1-09)T

**05. USDA.** United States Department of Agriculture. (10-1-09)T

**012. INTRASTATE MOVEMENT.**

No regulated articles may move within the state of Idaho without complying with the federal regulations, as incorporated by reference in Subsection 004.01 in this rule. (10-1-09)T

**013. QUARANTINED AREAS.**

Those areas of the State quarantined or regulated for PCN under 7 CFR Part 301 Sections 301.86-3 as published on the USDA APHIS PPQ internet website at [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/potato/pcn.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml). (10-1-09)T

**014. RESTRICTIONS.**

**01. Movement From a Non-Quarantined Area.** Movement of regulated articles from a non-quarantined area is subject to inspection by an inspector. Permits and certifications are not required. (10-1-09)T

**02. Movement From a Quarantined Area.** Movement of regulated articles from a quarantined area is subject to the provision of Section 015 of this rule. (10-1-09)T

**03. Other Restrictions.** No potatoes, tomatoes, eggplants, or any other known host crops may be planted in the infested fields. Soil must not be moved from the infested fields. Any equipment leaving the infested fields must be sanitized and certified using USDA APHIS

approved protocols.

(10-1-09)T

**04. Seed Potatoes.** Seed potatoes may not be grown in a quarantined area. (10-1-09)T

**015. CONDITIONS FOR INTRASTATE OR INTERSTATE MOVEMENT OF REGULATED ARTICLES.**

Regulated articles may only be moved intrastate or interstate from a quarantined area by a person under a compliance agreement if accompanied by a certificate or limited permit issued by an inspector in accordance with 7 CFR Part 301 Sections 301.86-4 and 5 as incorporated by reference in Section 004 of this rule. (10-1-09)T

**016. -- 019. (RESERVED).**

**020. INSPECTION, SAMPLING, AND TESTING.**

In order to accomplish the purposes of this rule, an inspector may enter upon and inspect any public or private premises, lands, means of conveyance, or article of any person within this State, for the purpose of inspecting, surveying, sampling, testing, treating, controlling, or destroying any soil, plant, or plant material thought to or found to contain or be infested with Pale Cyst Nematode. (10-1-09)T

**021. -- 024. (RESERVED).**

**025. PENALTIES.**

Any person violating any of the provisions of these rules will be subject to the penalty provisions of Title 22, Chapter 20, Idaho Code. (10-1-09)T

**026. -- 999. (RESERVED).**